STATE OF MICHIGAN

COURT OF APPEALS

In re LATOYA LAVERN MALLET, Minor.

LATOYA LAVERN MALLETT,

Appellee,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANTONIO SPRAGGS, a/k/a ANTONIO MCDOWELL,

Respondent-Appellant,

and

LATRASA MALLETT,

Respondent.

UNPUBLISHED
March 13, 2008

No. 280741
Saginaw Juvenile Division
LC No. 06-030365-NA

In re MALLETT Minors.

LATOYA LAVERN MALLETT and ANTOINETTE MALLETT,

Appellees,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LATARSA MALLETT,

Respondent-Appellant,

and

ANTONIO SPRAGGS, a/k/a ANTONIO MCDOWELL,

Respondent.

No. 281484
Saginaw Juvenile Division
LC No. 06-030365-NA

In re BUFORD Minors.

CAROL BUFORD and JEROME BUFORD,

Appellees,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LATARSA MALLETT,

Respondent-Appellant,

and

JEROME BUFORD,

Respondent.

No. 281485
Saginaw Juvenile Division
LC No. 06-030426-NA

In re EASHA LEEARA BUFORD, Minor.

EASHA LEEARA BUFORD,

Appellee,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LATARSA MALLETT,

Respondent-Appellant,

and

EDDIE BUFORD,

Respondent.

No. 281507
Saginaw Juvenile Division
LC No. 06-030427-NA

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

In this consolidated appeal, respondent Spraggs appeals as of right from the trial court order terminating his rights to the minor children, Latoya and Antoinette Mallett, and respondent Mallett appeals as of right from the trial court order terminating her parental rights to all the minor children.[1] Termination of parental rights was ordered pursuant to MCL 712A.19b(3)(c)(i) and (3)(g) with respect to both respondents, and, in addition, the court ordered termination pursuant to MCL 712A.19b(3)(h) as to respondent Spraggs due to his incarceration in the state of Illinois. We affirm.

[1] The trial court also terminated the rights of Jerome Buford, but he is not a party to this appeal. Eddie Buford was never determined to be the legal father of any of the children and is also not a party to this appeal.

Respondent Spraggs argues on appeal that his due process rights were violated because he was not permitted to participate telephonically in all of the proceedings. Because respondent Spraggs never raised this due process issue below, it is forfeited and reviewed for plain error affecting substantial rights. See *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

Applying the balancing test set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), as utilized by this Court in *In re Render*, 145 Mich App 344, 348-350; 377 NW2d 421 (1985), and *In re Vasquez*, 199 Mich App 44, 47-49; 501 NW2d 231 (1993), and which entails consideration of the private interest at stake, the risk of erroneous deprivation of that interest, and consideration of the government's interest, we find no due process violation. Respondent Spraggs was aptly represented by counsel at each and every hearing, Spraggs participated telephonically in the important adjudicative (formal) hearing and termination trial, Spraggs has not established that the correctional facility in Illinois would have even allowed him to participate by phone with respect to the other hearings, Spraggs does not show how his lack of participation in some hearings ultimately altered the outcome, and it is undisputed that Spraggs is incarcerated in Illinois for first-degree murder, attempted murder, and carjacking, with the earliest release date being 2048. Respondent Spraggs' presence by phone would have changed nothing. *Vasquez*, *supra* at 48. Under these circumstances, and given that there was no erroneous deprivation of Spraggs' parental interests, we hold that there was no plain error affecting his substantial rights, nor was there a due process violation.[2]

Respondent Mallett argues that the trial court erred in finding that DHS made reasonable efforts to prevent removal and to rectify the conditions that led to removal. We review for clear error a trial court's findings on appeal. MCR 3.977(J). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with the definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Generally, DHS must make reasonable efforts to reunite a respondent and her children through a treatment plan and referrals. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); MCL 712A.18f (agency needs to inform the court regarding efforts made to prevent a child's removal from home and efforts made to rectify conditions that caused removal). If reasonable efforts are not made, DHS can be prevented from establishing statutory grounds to terminate a respondent's parental rights. See *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). Additionally, "if [DHS] fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable

[2] Spraggs' argument concerning possible placement of the children with his mother fails because he did not provide pertinent information regarding his mother to the Department of Human Services (DHS) and because the argument, considering the circumstances of the case, quite clearly had no bearing on the termination of his parental rights. We also reject his argument that DHS failed to make reasonable efforts to reunite him with his children.

efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000).

We find that there is overwhelming evidence of DHS's efforts to offer services to respondent Mallett. She first received services in 2004, and again in 2005, before the children were taken into the custody of the court in 2006. As stated by the trial court:

> Before the children were removed, this lady was given an opportunity to deal with Families First, which is in-home reunification program, the ARC program, DOT, and the Work First Program—she's been referred there 15 times, the last time was shortly before the children were removed. Since that time, [she has] been offered psychological evaluation, counseling, substance abuse services through New Light, through DOT, through Saginaw Psychological Services, parent education through Teen Parenting. There is a record here of the Early On program even before removal.

Although respondent Mallett references her participation in parenting classes and counseling that began in August 2007, the existence of such last-minute efforts does not alter the fact that DHS previously provided numerous referrals for services that were either underutilized or ignored. Respondent Mallett's utilization of or benefit from services is a separate issue from whether DHS made reasonable efforts to provide respondent Mallett with services. We also find no evidence that respondent Mallett was benefiting from the services provided, thereby permitting termination. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Additionally, because respondent Mallett never submitted to a psychological evaluation, DHS was unable to determine what, if any, alternative services might have been necessary to help respondent Mallett benefit from services. Accordingly, the trial court's finding that DHS engaged in reasonable efforts was not clearly erroneous.

On review of all the arguments presented by respondents Spraggs and Mallett, we find no basis for reversal.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio